

AMENDED IN SENATE APRIL 14, 2010

AMENDED IN SENATE APRIL 7, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1399

Introduced by Senator Leno

February 19, 2010

An act to amend Section 3041 of, and to add Section 3550 to, the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1399, as amended, Leno. Parole: physically or cognitively debilitated or incapacitated inmates.

Existing law generally regulates the granting and conditioning of parole, and places the duty to monitor parolees on the Division of Adult Parole Operations. Existing law, ~~as added by Proposition 9~~, the Victim's Bill of Rights Act of 2008: Marsy's Law, *as added by Proposition 9* at the November 4, 2008, statewide general election, provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process.

This bill would provide that, except as specified, any prisoner who the Board of Parole Hearings determines, based on the results of medical evaluations, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated and the conditions under which the prisoner would be released would not *reasonably* pose a threat to public safety, shall be granted medical parole. Those provisions would not apply to any prisoner sentenced to death or life in prison without possibility of

parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute. The bill would require that parole placements and revocations pursuant to ~~this bill~~ *its provisions* shall be made in accordance with the Victim's Bill of Rights Act of 2008: Marsy's Law. The bill would require a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for a prisoner to recommend that a prisoner be referred to the Board of Parole Hearings for consideration for medical parole if the physician believes the prisoner meets the criteria for medical parole. The bill would provide that the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Penal Code is amended to
2 read:
3 3041. (a) In the case of any inmate sentenced pursuant to any
4 provision of law, other than Chapter 4.5 (commencing with Section
5 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet
6 with each inmate during the third year of incarceration for the
7 purposes of reviewing the inmate's file, making recommendations,
8 and documenting activities and conduct pertinent to granting or
9 withholding postconviction credit. One year prior to the inmate's
10 minimum eligible parole release date a panel of two or more
11 commissioners or deputy commissioners shall again meet with the
12 inmate and shall normally set a parole release date as provided in
13 Section 3041.5. No more than one member of the panel shall be a
14 deputy commissioner. In the event of a tie vote, the matter shall
15 be referred for an en banc review of the record that was before the
16 panel that rendered the tie vote. Upon en banc review, the board
17 shall vote to either grant or deny parole and render a statement of
18 decision. The en banc review shall be conducted pursuant to
19 subdivision (e). The release date shall be set in a manner that will
20 provide uniform terms for offenses of similar gravity and
21 magnitude with respect to their threat to the public, and that will
22 comply with the sentencing rules that the Judicial Council may

1 issue and any sentencing information relevant to the setting of
2 parole release dates. The board shall establish criteria for the setting
3 of parole release dates and in doing so shall consider the number
4 of victims of the crime for which the inmate was sentenced and
5 other factors in mitigation or aggravation of the crime. At least
6 one commissioner of the panel shall have been present at the last
7 preceding meeting, unless it is not feasible to do so or where the
8 last preceding meeting was the initial meeting. Any person on the
9 hearing panel may request review of any decision regarding parole
10 for an en banc hearing by the board. In case of a review, a majority
11 vote in favor of parole by the board members participating in an
12 en banc review is required to grant parole to any inmate.

13 (b) The panel or the board, sitting en banc, shall set a release
14 date unless it determines that the gravity of the current convicted
15 offense or offenses, or the timing and gravity of current or past
16 convicted offense or offenses, is such that consideration of the
17 public safety requires a more lengthy period of incarceration for
18 this individual, and that a parole date, therefore, cannot be fixed
19 at this meeting. After the effective date of this subdivision, any
20 decision of the parole panel finding an inmate suitable for parole
21 shall become final within 120 days of the date of the hearing.
22 During that period, the board may review the panel's decision.
23 The panel's decision shall become final pursuant to this subdivision
24 unless the board finds that the panel made an error of law, or that
25 the panel's decision was based on an error of fact, or that new
26 information should be presented to the board, any of which when
27 corrected or considered by the board has a substantial likelihood
28 of resulting in a substantially different decision upon a rehearing.
29 In making this determination, the board shall consult with the
30 commissioners who conducted the parole consideration hearing.
31 No decision of the parole panel shall be disapproved and referred
32 for rehearing except by a majority vote of the board, sitting en
33 banc, following a public meeting.

34 (c) For the purpose of reviewing the suitability for parole of
35 those inmates eligible for parole under prior law at a date earlier
36 than that calculated under Section 1170.2, the board shall appoint
37 panels of at least two persons to meet annually with each inmate
38 until the time the person is released pursuant to proceedings or
39 reaches the expiration of his or her term as calculated under Section
40 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

(f) Notwithstanding any other provision of law, except as provided in subdivision (g), any prisoner sentenced to a term of imprisonment under Section 1168 who the Board of Parole Hearings determines, based on the results of the medical evaluations performed by the Department of Corrections and Rehabilitation physicians, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being

1 physically or cognitively debilitated or incapacitated and the
2 conditions under which the prisoner would be released would not
3 *reasonably* pose a threat to public safety shall be granted medical
4 parole.

5 (g) Subdivision (f) shall not apply to any prisoner sentenced to
6 death or life in prison without possibility of parole or to any inmate
7 who is serving a sentence for which parole, pursuant to subdivision
8 (f), is prohibited by any initiative statute. Parole placements and
9 revocations pursuant to subdivision (f) shall be made in accordance
10 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

11 (h) When a physician employed by the Department of
12 Corrections and Rehabilitation who is the primary care provider
13 for an inmate identifies an inmate that he or she believes meets
14 the criteria for medical parole specified in subdivision (f), the
15 primary care physician shall recommend to the chief medical
16 officer of the institution where the prisoner is located that the
17 prisoner be referred to the Board of Parole Hearings for
18 consideration for medical parole. Within 30 days of receiving that
19 recommendation the chief medical officer shall make a
20 determination of the prisoner's eligibility for medical parole and,
21 if he or she concurs in the recommendation of the primary care
22 physician, refer the matter to the Board of Parole Hearings. If the
23 chief medical officer does not concur in the recommendation, he
24 or she shall provide the primary care physician with a written
25 explanation of the reasons for denying the referral.

26 (i) Notwithstanding any other law, medical parole hearings shall
27 be conducted by two-person panels consisting of at least one
28 commissioner. In the event of a tie vote, the matter shall be referred
29 to the full board for a decision.

30 (j) Notwithstanding any other provisions of this section, the
31 prisoner or his or her family member or designee may
32 independently request consideration for medical parole by
33 contacting the chief medical officer at the prison or the secretary.
34 Within 30 days of receiving the request, the chief medical officer
35 shall , in consultation with the prisoner's primary care physician,
36 make a determination whether the prisoner meets the criteria for
37 medical parole as specified in subdivision (f) and, if the chief
38 medical officer determines that the prisoner satisfies the criteria
39 set forth in subdivision (f), he or she shall refer the matter to the
40 Board of Parole Hearings. ~~Upon receiving a recommendation from~~

1 a chief medical officer of the department for a prisoner to be
2 granted medical parole, the board, as specified in subdivision (i),
3 shall make an independent judgment and make findings related
4 thereto. If the chief medical officer does not concur in the
5 recommendation, he or she shall provide the prisoner or his or her
6 family member or designee with a written explanation of the
7 reasons for denying the application.

8 *(k) Upon receiving a recommendation from a chief medical*
9 *officer of the department for a prisoner to be granted medical*
10 *parole pursuant to subdivision (h) or (j), the board, as specified*
11 *in subdivision (i), shall make an independent judgment and make*
12 *findings related thereto.*

13 ~~(k)~~

14 *(l)* The Division of Adult Parole Operations shall have the
15 authority to impose any reasonable conditions on prisoners subject
16 to medical parole supervision pursuant to subdivision (f), including,
17 but not limited to, the requirement that the parolee submit to
18 electronic monitoring. As a further condition of medical parole,
19 pursuant to subdivision (f), the parolee may be required to submit
20 to an examination by a physician for the purpose of diagnosing
21 their current medical condition. In the event such an examination
22 takes place, a report of the examination and diagnosis shall be
23 submitted to the board by the examining physician. If the board
24 determines that the person's medical condition has substantially
25 improved and that the person poses a threat to public safety, the
26 board may revoke the parole and return the person to the custody
27 of the department.

28 (1) Notwithstanding any other provision of law establishing
29 maximum periods for parole, a prisoner placed on medical parole
30 supervision prior to the earliest possible parole date that the
31 prisoner would otherwise have been released to parole under, shall
32 remain on medical parole, pursuant to subdivision (f), until that
33 earliest possible parole date, at which time the provisions of
34 paragraph (2) shall apply.

35 (2) At the expiration of the period described in paragraph (1),
36 the parolee shall commence serving that period of parole provided
37 by, and under all other provisions of, Chapter 8 (commencing with
38 Section 3000) of Title 1 of Part 3.

39 ~~(t)~~

1 (m) The warden or warden's representative, along with the
2 appropriate medical or mental health care representatives, shall,
3 at the time a prisoner is placed on medical parole supervision
4 pursuant to subdivision (f), ensure that the prisoner has applied
5 for any federal entitlement programs for which the prisoner is
6 eligible, and has in his or her possession a discharge medical
7 summary, full medical records, parole medications, and all property
8 belonging to the prisoner that was under the control of the
9 department. Any additional records shall be sent to the prisoner's
10 forwarding address after release to health care-related parole
11 supervision.

12 SEC. 2. Section 3550 is added to the Penal Code, to read:

13 3550. (a) Notwithstanding any other provision of law, except
14 as provided in subdivision (b), any prisoner sentenced to a term
15 of imprisonment under Section 1170 who the Board of Parole
16 Hearings determines, based on the results of the medical
17 evaluations performed by the Department of Corrections and
18 Rehabilitation physicians, suffers from a significant and permanent
19 condition, disease, or syndrome resulting in the prisoner being
20 physically or cognitively debilitated or incapacitated and the
21 conditions under which the prisoner would be released would not
22 *reasonably* pose a threat to public safety shall be granted medical
23 parole.

24 (b) Subdivision (a) shall not apply to any prisoner sentenced to
25 death or life in prison without possibility of parole or to any inmate
26 who is serving a sentence for which parole, pursuant to subdivision
27 (a), is prohibited by any initiative statute. Parole placements and
28 revocations pursuant to subdivision (a) shall be made in accordance
29 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

30 (c) When a physician employed by the Department of
31 Corrections and Rehabilitation who is the primary care provider
32 for an inmate identifies an inmate that he or she believes meets
33 the criteria for medical parole specified in subdivision (a) the
34 primary care physician shall recommend to the chief medical
35 officer of the institution where the prisoner is located that the
36 prisoner be referred to the Board of Parole Hearings for
37 consideration for medical parole. Within 30 days of receiving that
38 recommendation the chief medical officer shall make a
39 determination of the prisoner's eligibility for medical parole and,
40 if he or she concurs in the recommendation of the primary care

1 physician, refer the matter to the Board of Parole Hearings. If the
2 chief medical officer does not concur in the recommendation, he
3 or she shall provide the primary care physician with a written
4 explanation of the reasons for denying the referral.

5 (d) Notwithstanding any other law, medical parole hearings
6 shall be conducted by two-person panels consisting of at least one
7 commissioner. In the event of a tie vote, the matter shall be referred
8 to the full board for a decision.

9 (e) Notwithstanding any other provisions of this section, the
10 prisoner or his or her family member or designee may
11 independently request consideration for medical parole by
12 contacting the chief medical officer at the prison or the secretary.
13 Within 30 days of receiving the request, the chief medical officer
14 shall, in consultation with the prisoner's primary care physician,
15 make a determination whether the prisoner meets the criteria for
16 medical parole as specified in subdivision (a) and, if the chief
17 medical officer determines that the prisoner satisfies the criteria
18 set forth in subdivision (a), he or she shall refer the matter to the
19 Board of Parole Hearings. ~~Upon receiving a recommendation from~~
20 ~~a chief medical officer of the department for a prisoner to be~~
21 ~~granted medical parole, the board, as specified in subdivision (d),~~
22 ~~shall make an independent judgment and make findings related~~
23 ~~thereto.~~ If the chief medical officer does not concur in the
24 recommendation, he or she shall provide the prisoner or his or her
25 family member or designee with a written explanation of the
26 reasons for denying the application.

27 (f) *Upon receiving a recommendation from a chief medical*
28 *officer of the department for a prisoner to be granted medical*
29 *parole pursuant to subdivision (c) or (e), the board, as specified*
30 *in subdivision (d), shall make an independent judgment and make*
31 *findings related thereto.*

32 (f) ~~(f)~~
33 (g) Notwithstanding any other provision of law, the Division
34 of Adult Parole Operations shall have the authority to impose any
35 reasonable conditions on prisoners subject to medical parole
36 supervision pursuant to subdivision (a), including, but not limited
37 to, the requirement that the parolee submit to electronic monitoring.
38 As a further condition of medical parole, pursuant to subdivision
39 (a), the parolee may be required to submit to an examination by a
40 physician for the purpose of diagnosing their current medical

1 condition. In the event such an examination takes place, a report
2 of the examination and diagnosis shall be submitted to the board
3 by the examining physician. If the board determines that the
4 person's medical condition has substantially improved and that
5 the person poses a threat to public safety, the board may revoke
6 the parole and return the person to the custody of the department.

7 (1) Notwithstanding any other provision of law establishing
8 maximum periods for parole, a prisoner placed on medical parole
9 supervision prior to the earliest possible parole date that the
10 prisoner would otherwise have been released to parole under, shall
11 remain on medical parole, pursuant to subdivision (a), until that
12 earliest possible parole date, at which time the provisions of
13 paragraph (2) shall apply.

14 (2) At the expiration of the period described in paragraph (1),
15 the parolee shall commence serving that period of parole provided
16 by, and under all other provisions of, Chapter 8 (commencing with
17 Section 3000) of Title 1 of Part 3.

18 ~~(g)~~

19 (h) The warden or warden's representative, along with the
20 appropriate medical or mental health care representatives, shall,
21 at the time a prisoner is placed on medical parole supervision
22 pursuant to subdivision (a), ensure that the prisoner has applied
23 for any federal entitlement programs for which the prisoner is
24 eligible, and has in his or her possession a discharge medical
25 summary, full medical records, parole medications, and all property
26 belonging to the prisoner that was under the control of the
27 department. Any additional records shall be sent to the prisoner's
28 forwarding address after release to health care-related parole
29 supervision.